IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 28 of 2002

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 17th November, 2006

Heard Shri S.G. Deshpande, the learned counsel for the appellant.

2. Challenge in this appeal is to the Judgment and decree dated 7.8.2001 passed by the 9th Additional District and Sessions Judge, Nagpur in Regular Civil Appeal No. 208/95 allowing the appeal filed by the respondent no.1-original defendant no.1 against the Judgment and decree dated 7.4.1995 passed by the 3rd Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No. 2611/90.

3. The appellant- plaintiff filed the suit for declaration and possession against the defendants on the ground that the defendant no.1 had made illegal construction upon the suit plot bearing no. 74 which was purchased by the correction deed dated 4.9.1990. According to the plaintiff, he purchased plot no. 77-B on 21.1.1988 for consideration of Rs. 3000/- by registered sale-deed from defendant no.2. It is further the case of the

plaintiff that taking undue advantage of his absence in Nagpur somebody encroached upon the said plot and, therefore, he approached the defendant no.2 and requested him to give another plot. Accordingly, the defendant no.2 assured him to give another plot bearing no. 74 in place of plot no. 77-B. By the deed which was styled as correction deed dated 4.9.1990 the number of the plot as well as boundaries of the plot were corrected and in place of plot no. 77-B plot no. 74 was substituted with different boundaries. It is further the case of the plaintiff that defendant no.1 encroached upon the suit plot taking advantage of the absence of the plaintiff and, therefore, he was compelled to file the suit.

4. The trial court after appreciating the evidence led by the parties held that the plaintiff had established the title to the suit plot and consequently granted declaration and permanent injunction. However, the trial court refused the relief of mandatory injunction to remove the house constructed by the defendant no1. The said defendant no.1 preferred appeal against the Judgment and decree passed by the trial court. The lower appellate court held that by the deed of correction the plot no. 74 was sought to be transferred to the plaintiff and as such the deed dated 4.9.1990 could not be termed as deed of correction. The lower appellate court, therefore, held that the plaintiff had not proved his title to the suit

plot inasmuch as by the alleged deed of correction entirely new plot was sought to be transferred in place of the old one. The defendant no.1 has filed the present second appeal challenging the Judgment and decree passed by the lower appellate court.

5. Mr. Deshpande, the learned counsel appearing for the appellant submitted that the lower appellate Court erred in holding that by the deed dated 4.9.1990 no title to the suit plot was conveyed by the defendant no.2 in favour of the plaintiff. According to the learned counsel, the deed dated 4.9.1990 was perfectly legal and, therefore, the plaintiff had lawfully acquired the title to the suit plot. The learned counsel further submitted that the lower appellate Court erred in reversing the Judgment and decree passed by the trial court.

6. Having considered the submissions made by the learned counsel for the appellant and having perused the Judgments passed by both the courts below I find myself unable to agree with the submissions made by Mr. Deshpande. The evidence led by the parties clearly establishes that by sale-deed dated 21.2.1988 (Exh. 43) plot no. 77-B was sold to the plaintiff by the defendant no. 2 whereas by the deed dated 4.9.1990 the plot no. 74 having different boundaries was sought to be substituted in place of the Plot no. 77 B by way of deed of correction.

What was done by executing the alleged deed of correction was substitution of plot no. 77-B by plot no. 74 as is evident from the fact that no separate consideration was paid in respect of the deed dated 4.9.1990. Since the two plots are entirely different plots, deed dated 4.9.1990 cannot be termed as correction deed. Therefore, the lower appellate court was justified in holding that no title was conveyed in respect of the plot no. 74 in favour of the plaintiff. I do not find any infirmity in the said finding inasmuch as admittedly no separate consideration was paid while executing the sale-deed dated 4.9.1990. The lower appellate Court was, therefore, justified in holding that the deed dated 4.9.1990 could not be termed as the deed of correction. Therefore, the finding given by the lower appellate court that the plaintiff had not proved title to the suit plot cannot be faulted. In my opinion, therefore, the lower appellate court was justified in reversing the decree passed by the trial court.

7. For the reasons aforesaid, I do not find any merit in this appeal. No substantial question of law is involved in this appeal. Hence the appeal is summarily rejected.

C.A. No. 486/2002: In view of the dismissal of the appeal nothing survives in this application. Hence, the application is dismissed as infructuous.

Judge

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